Town of Amherst Zoning Board of Appeals - Special Permit



Applicant: Thomas Lane

24 Summer Street, Amherst, MA 01002

Owner: W. D. Cowls, Inc., 134 Montague Road, North Amherst, MA 01059

Date Application filed with the Town Clerk: November 3, 2006

Nature of request: Petitioner seeks a Special Permit under Section 3.321 of the Zoning Bylaw to construct a two-family dwelling.

Location of property: Henry Street, Map 6A, Parcel 91, R-N Zone.

Legal notice: Published in the Daily Hampshire Gazette on November 15 and 22, 2006, and sent to abutters on November 15, 2006.

Board members: Ted Rising, Hilda Greenbaum and Jane Ashby

Submissions:

The applicant submitted the following documents:

- Management Plan;
- Site Plan, prepared by Thomas Lane Designer, dated November 1, 2006;
- Building Elevations showing South, East, North and West Facades, undated;
- Floor Plan, undated;
- Revised Site Plan, prepared by Thomas Lane Designer, dated November 30, 2006;
- Email from Tom Lane to Christine Brestrup, dated December 14, 2006, requesting a continuation of the public hearing due to lack of information;
- Revised plans, undated, submitted prior to January 25, 2007, continued public hearing;
- Revised plans, undated, submitted prior to January 31, 2007, continued public hearing, including cross section through site, showing driveway grading.

Town staff and other boards and commissions submitted the following documents:

- Memorandum from the Planning Department dated November 22, 2006, commenting on the application;
- Email from Christine Brestrup, Land Use Planner to Jonathan Tucker, Planning Director, with embedded comments from Mr. Tucker, dated December 6, 2006, commenting on sections of the Zoning Bylaw regarding the steepness of driveways;
- Email to applicant from Christine Brestrup to the applicant, dated December 4, 2006, listing questions posed by one of the Zoning Board members;
- Various plans from the Amherst GIS system showing the site in context with the surrounding area;
- Memorandum from the Fire Department, dated November 27, 2006, commenting on the application;
- Email from Christine Brestrup to the Board dated January 24, 2007, commenting on revised plans submitted by applicant.

Site Visit: November 28, 2006

At the first site visit the Board was met by Tom Lane, the applicant. The Board observed:

- The location of the site on a narrow country road in North Amherst, across the street from a line of railroad tracks;
- The approximate location of the property lines on the north, west and south sides of the property;
- The ridge line that runs through the center of the site, where the houses are proposed to be built;
- The steep topography that leads from the roadway up to the proposed home sites;
- The proximity of the adjacent homes to the south;
- The approximate location of the proposed driveway;
- The approximate location of the proposed septic system and leach field;
- The wooded nature of the site, including mature evergreens and hardwoods.

Site Visit: January 29, 2007

The Board conducted a second site visit to view a new parcel of land that is approximately 120 feet further north along Henry Street than the previously-proposed parcel. The applicant is now proposing to build the two-family house on this parcel because of its more gentle topography. The Board was met by Peter Jessop of Integrity Construction and Kathleen Lugosch, Professor of Architecture at UMass. The Board observed:

- The proposed right-of-way over land of Cowls Lumber that will provide access to the dwelling units;
- The low point on the site, near Henry Street, where the septic system leach field and the drainage catchment area will be located;
- The heavily wooded nature of the existing site;
- The large trees along the perimeter of the site that are proposed to be saved;
- The proposed location for each unit;
- The power line easement that runs behind the house location;
- The changing topography of the site, including a flat, low area near the road and a gentle hill rising up towards the power line easement to the east.

Public Hearing: November 30, 2006

Tom Lane presented the application. He made the following comments:

- The project is a joint effort by the University of Massachusetts Architecture Department and Cowls Lumber, the landowner;
- Cowls will donate the parcel of land on which the duplex will be built;
- The University is providing design expertise; Mr. Lane is the student designer for the homes; he is being advised by faculty at UMass;
- The project is intended to be a solution to the trend of homes that are too expensive for purchase by those who work here in Amherst;
- The houses are proposed to be about 1,500 square feet, which is less than many of the homes being built today, many of which are more than 2,000 square feet;
- The homes are proposed to be built as a duplex, on one parcel, so that the two homeowners can split the cost of the land;
- Each unit will contain three bedrooms, including one master bedroom and two smaller bedrooms;
- The design includes passive-solar features which will aid in energy consumption;
- The site faces south and the pitch of the roof and siting of the homes will help to increase solar gain and reduce energy costs;
- There is an exterior covered, enclosed storage area provided for each unit;
- This storage structure which connects the dwelling units can be used to store bulky items;

- Each unit will have the feel of a single-family home;
- There is adequate parking, at two spaces per unit, to satisfy Zoning requirements;
- The exterior cladding of the buildings will probably be "hardi-board" or "hardi-plank" siding which is a cementitious composite material that looks like wood clapboards.

Mr. Lane described the floor plan. There was a discussion of door locations and circulation through the units as well as circulation on site between the units and the storage structure and between the units and the parking area. Mr. Lane noted that both units will be identical. He stated that there will be a covered walkway in front of the storage structure.

Mr. Lane noted that there will be clerestory windows on the north side of the homes for ventilation and cooling in summer. (Clerestory windows are windows in the upper part of a wall.) The rear of the buildings will be partially buried in the earth for insulation. The applicant showed revised elevation drawings.

Ms. Greenbaum asked about the trees on the site, specifically which ones would stay and which ones would go. Mr. Rising noted that many trees would need to be cut down to accommodate construction of the homes and for passive solar gain as well as for grading for the septic system and the driveway. Ms. Greenbaum commented that a landscape plan was needed, especially in light of the amount of existing vegetation that would need to be cut to allow the homes to be built.

Ms. Greenbaum asked why there were no windows on the west façade. There was a discussion regarding the location of windows.

Mr. Lane stated that the roof pitch had been revised from the drawings originally submitted. The proposed roof pitch is now 3 to 12, more steep than originally proposed, allowing for the use of standard roofing materials. There will be metal roofing throughout the buildings.

Christine Brestrup of the Planning Department commented on the steepness of the driveway and noted concerns about the lack of a storm water management system. Mr. Rising noted that the grading of the driveway was an issue and he asked the applicant to speak with the Town Engineer about the grading and drainage plan.

Ms. Greenbaum stated that 80 square feet of storage is not big enough for the residents of the homes to store all of their things, including yard maintenance equipment, bicycles, baby carriages, garbage cans, recycling containers, etc. Mr. Lane stated that there would be storage provided inside of the units, in closets.

Ms. Ashby inquired about the size of the interior closets and noted that there was one closet proposed for each bedroom, plus one coat closet and one extra closet in each unit. She commented that there appears to be enough storage inside the units.

Mr. Lane noted that there are areas on the site where porches could be added and that the slab-on-grade will act as a "heat sink" for passive solar gain.

There was discussion about the type of heating system to be used, questions about the proposed floor covering and comments about the possibility of heating the slab.

Ms. Greenbaum noted that a Homeowners' Agreement would be required by the Board along with a revised Management Plan.

There was discussion of the fact that the base topography used for the Site Plan was generated from the Amherst GIS system rather than an on-site survey by a registered land surveyor. The Board members stated that they would be satisfied with the use of the GIS topography if the Town Engineer was satisfied.

The Board members noted that they would like to have more information on trees to be removed and those that would stay. They requested that the trees to be removed be shown by flagging the trees in the field. They noted that the trees that were removed should be replaced with landscaping.

Ms. Greenbaum stated that there were mature pine trees on the north and east sides of the site. She requested that a plan be submitted showing where the septic system and leach field would be located. She noted that the leach field will have an aesthetic impact on the site because of the grading and tree removal required.

Two members of the public spoke in opposition to the application.

Alton Acker of 53 Henry Street stated that there should be a ban on duplexes, stating that building a duplex will affect the neighborhood in a negative manner. The proposed duplex is too close to the salamander crossing, too near the Cushman School and he disagreed that workers need to live near their work places.

Sean Burke of 50 Henry Street stated that he was opposed to the application because it is incompatible with the neighborhood of single-family homes. He disagreed that the units will be affordable at the price that has been quoted. He noted that there is ledge on the site.

Bonnie Weeks, Building Commissioner, stated that a Special Permit from the Zoning Board of Appeals is required to build a duplex. Mr. Rising noted that there were four duplexes at the end of Market Hill Road.

Ms. Greenbaum MOVED to continue the evidentiary portion of the public hearing to Thursday, December 14, 2006, at 7:45 p.m. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: December 14, 2006

The applicant submitted an email on December 14, 2006, requesting that the hearing be rescheduled to a later date due to lack of information on the septic system. Ms. Greenbaum continued the public hearing to January 10, 2006, at 7:30 p.m., at the request of the applicant.

Continued Public Hearing: January 10, 2007

The applicant requested that the hearing be continued to a later date due to lack of information. At the public hearing Ms. Greenbaum continued the public hearing to January 25, 2007, at 8:00 p.m.

Continued Public Hearing: January 25, 2007

At the continued public hearing Kathleen Lugosch, professor of architecture at the University of Massachusetts, and Ben Goodale, Master of Architecture student and project manager for Integrity Construction, presented the petition. They explained that the location for the house had been moved 120 feet north along Henry Street because of problems with topography at the original site. The new site is not as steep and has a larger flat area near the road to accommodate drainage and the septic system. Mr. Goodale will manage a group of students who will build the duplex.

Ms. Lugosch and Mr. Goodale explained that the driveway leading into the site had been redesigned. It would now run along the north side of the parcel, on land of Cowls Lumber. Cowls would grant an easement for use of this driveway to the owners of the two units. Individual driveways will provide access to each unit

from the main driveway. The site conditions are different on this new site. The ridge-line on which the homes will be built contains ledge. Because of the need to accommodate storage and utilities the homes will have basements, however the basements will be partial basements because of the ledge.

The Board inquired about whether the proposed reconstruction of Henry Street would affect plans for this site. Ms. Brestrup stated that she had discussed this issue with the Town Engineer, Jason Skeels and that there would not be an impact on this site as a result of the reconstruction of Henry Street.

The Board discussed drainage on the site. A new dry well would be added to the east side of the Henry Street, north of this site, to collect runoff from the roadway. The driveway for the site has been graded so that there will be a low spot just east of the entry to Henry Street. The low spot will prevent storm water from flowing out onto the road. From the low spot, drainage will be directed to an on-site retention basin. Mr. Goodale noted that the soil report showed that the site could handle on-site retention and infiltration.

The driveway will be almost flat at the bottom of the hill. The grade in the middle of the drive will be about 7% with a short stretch (about 15 to 20 feet) to be graded at 15%.

The Board expressed concern that it had visited one site but that the structure was now being proposed for another site. The Board stated that it would like to schedule a second site visit to view the new site.

The Board discussed the need for an ANR (Approval Not Required) plan for the new site which is to be carved out of a larger Cowls Lumber lot. The Board also discussed whether this structure should be considered a duplex or two single-family homes.

Ms. Lugosch stated that there will be a connector between the two units, but the connector is not shown on this set of drawings. The floor plan has not changed substantially since the previous hearing. The individual driveways will be level, with connections to decks that will lead to the main entry door for each unit.

The Board stated that it will need up-to-date, completed drawings, including sections through the site showing the grading of the driveway and the entryways. The Board would like the structure to look like a single structure, not two homes.

The revised drawings should show appropriate grading, existing topography, a turnaround area for parking, trees to be removed and to remain and a section through the site. The Board recommended that the applicant speak with the Board of Health about the septic system. Ms. Lugosch stated that there would be one septic tank and one leach field to serve the two homes so that the units will be more affordable.

The Board scheduled a second site visit for 10:00 a.m. on Monday, January 29, 2007.

Ms. Greenbaum MOVED to continue the evidentiary portion of the public hearing to January 31, 2007, at 5:00 p.m. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: January 31, 2007

Mr. Goodale stated that the new lot will have frontage along Henry Street of 120 feet. The lot will be approximately 180 feet deep, but it is not a regular shape. He was unsure of the total square footage of the proposed lot. Christine Brestrup of the Planning Department noted that the lot previously proposed for development met the zoning requirements because it was 26,000 square feet, 20,000 square feet for the first dwelling unit and 6,000 square feet for the second unit.

Ms. Lugosch and Mr. Goodale made the following statements:

- The land for the project is being donated by Cowls Lumber;
- Cowls will also give an easement for a driveway that will serve the new two-family house;
- There will be two small driveways off the Cowls easement, serving each of the proposed units;
- The main driveway will be graded so that it is relatively flat at the bottom, as it approaches Henry Street; this will give cars a place to rest before they enter the roadway;
- The sight distance is good in this location;
- The two units will be identical; each will have three (3) bedrooms and a main living space;
- The basements will be slightly different due to the expectation of ledge below ground;
- Each unit will have a basement on the west side and a crawl space on the east side;
- The basements will provide additional storage as suggested by the Board at previous meetings;
- Each unit will have its own entrance and outdoor space and will feel like a single-family house;
- The septic system, shared by both units has been designed and located on the site plan;
- There is a public utility power line easement directly behind the proposed houses;
- The northernmost unit sits just inside of the 15 foot setback limit from the north property line;
- There will be an entry for each unit on the north side and an interior stair will be added to provide access to the basement; the mechanical room will be in the basement;
- The units will be 1,380 square feet each, not including the storage sheds;
- There will be two sheds of different sizes; the one between the units will be 22 feet by 6 feet; the one on the south side will be 16 feet by 6 feet; there will be adequate interior and exterior storage;
- The budget for the units does not provide for a large planting plan;
- The purchase price will be approximately \$280,000, so the landscaping will be minimal;
- The areas of the two driveways can be reduced, providing for more lawn area.

The Board asked the applicants to explain how this proposal fits the definition of a duplex or two-family house as defined by the Zoning Bylaw. There was extensive discussion regarding this topic. The applicants stated that the storage shed between the units is the point of connection and that it is part of the structure because it shares a foundation wall and includes a roof.

Bonnie Weeks, Building Commissioner, presented information on the definition of a two-family house from the Building Code. The Building Code classifies the proposed building as a two-family house or duplex because of the connection. It has a continuous foundation wall, a wood vertical wall and a roof structure. Ms. Weeks noted that the definition of a building includes accessory structures such as the proposed storage shed. She referred to a section of the Massachusetts Building Code, 780 CMR 3602. Ms. Weeks noted that it was up to the Board to decide whether this proposal meets the intention of the Zoning Bylaw with respect to two-family houses. She stated that in the past the Board has allowed two-family houses in which the two units are connected by a deck with a roof or a breezeway that includes a roof.

Ms. Greenbaum stated that the Board should include a condition requiring the submission of condominium documents.

Ms. Ashby asked about the intended purpose of the storage sheds and whether they would be used to store trash, as described in the previous presentation of the project. Ms. Lugosch noted that the sheds will not function as storage for trash and recycling. They will provide storage for bicycles, grills and other types of large items. There will be no entrance to the storage sheds from inside the units. The sheds will face the east or hill side of the property and will have an entry from that side. They will act as a buffer from the road to form private open spaces behind each of the units.

The Board expressed concern that the wall of the larger shed would be long and would not have any articulation, such as windows or other ways of breaking up the long expanse of wall. The Board and the applicants discussed the design of the sheds.

Ms. Greenbaum noted that the only access to the cellar or basement is through the living space of the house and that this may be an obstacle for bringing large items into the basements. There is no bulkhead planned for entry into the basement. Ms. Lugosch reminded the Board that the designers are trying to keep the costs low and that installing a bulkhead would add to the cost.

Ms. Ashby asked about passive solar design and whether this was still a feature of the structures. Ms. Lugosch and Mr. Goodale stated that some of the passive solar design had been compromised because of the addition of basements; however the intent to incorporate passive solar design was still part of the proposal. The buildings will be south-facing, some of the trees will be cleared to allow solar gain, there will be a roof overhang to protect the interiors from excess solar gain, but there may problems in obtaining enough thermal mass for heat storage. The heating system will be fueled by propane or oil. The tanks will be in the basement or underground.

The Board and the applicants discussed the proposed color of the different parts of the building and concluded that the colors would be coordinated with each other.

Jane Ashby MOVED to close the evidentiary portion of the public hearing. Hilda Greenbaum SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

The Board discussed potential conditions that would be imposed and findings that would be made if the application were to be approved. The Board noted its desire to have the duplex look like one single building from the street. The Board discussed the relationship of the roof lines of the sheds and the roof lines of the units. The Board discussed what the building would look like.

Public Meeting – Zoning Board Decision

Ms. Ashby MOVED to approve the application with conditions. Mr. Rising SECONDED the motion. The Board VOTED unanimously to approve the application with conditions. The Board then drafted conditions.

The Board agreed to continue its discussion of the conditions on February 9, 2007, at 1:00 p.m.

Continued Public Meeting – Discussion February 9, 2007

The Board discussed and amended the conditions that it had drafted at the previous meeting. The Board also discussed its findings under Section 10.38.

Public Meeting – Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

- 10.380 and 10.381 The proposal is suitably located in the neighborhood and is compatible with existing uses because, although the neighborhood is made up primarily of single-family homes, there is an existing two-family home at the intersection of Henry Street and Market Hill Road and the Board has worked with the applicant to ensure that the two units will appear from the road to be one united structure.
- 10.382 and 10.385 The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the use of the property will be residential as are the other properties in the vicinity, the grading of the driveway and the property

- has been designed to prevent stormwater from flowing onto Henry Street, the conditions require that exterior lights be downcast and the conditions require that final floor plans and elevations of the structure be approved by the Board.
- 10.383 and 10.387 The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because there will be only two families living on the premises so the number of cars entering and leaving will be limited, and the driveway has been designed to include a flat, resting place at the bottom of the slope, before the entry onto Henry Street, to allow for a place to stop before entering the roadway. In addition the on-site parking spaces will be adjacent to the entry to each unit, with access to the doorway via a stairway and deck.
- <u>10.384</u> Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the dwelling units have been carefully designed to provide adequate living space, storage space and utility space for two families.
- 10.386 The proposal ensures that it is in conformance with the Parking and Sign regulations because there is space to park two cars per unit adjacent to each dwelling, as required by Section 7.000 of the Zoning Bylaw and there are no signs proposed.
- 10.388 The proposal ensures adequate space for off-street loading and unloading of vehicles because each unit will have a flat driveway area adjacent to the unit for loading and unloading.
- 10.389 The proposal provides adequate methods of disposal and /or storage for sewage, refuse, recyclables and other wastes because animal-proof sheds will be provided for the proper storage of trash and recyclables between pick-up and the site will be provided with a properly designed septic system.
- 10.390 The proposal ensures protection from flood hazards because the driveway has been graded with a low point and a drainage catchment area adjacent to Henry Street, to prevent flooding of Henry Street by run-off from the site.
- 10.391 The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because some of the larger existing trees around the perimeter of the site will be preserved and the basements have been designed to prevent substantial interference with the bedrock of the site by creating partial basements in addition to crawl spaces rather than full basements.
- 10.392 The proposal provides adequate landscaping because a landscape plan has been provided that shows the addition of deciduous and evergreen trees to be planted between the structures and the street.
- 10.393 The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, because the conditions require that exterior lighting be downcast and they require that the lighting shall not shine onto adjacent properties or streets.
- 10.394 The proposal avoids to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes and wetlands because, although there will be substantial grading to construct the driveways and the dwelling units, the houses are sited to fit into the slopes that exist on the site. There are no wetlands or buffer zones nearby.
- 10.395 The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity because the structure had been designed to appear as a single structure when viewed from off-site and the Board has imposed a condition requiring that final floor plans and elevations be submitted for approval by the Board.
- 10.396 The proposal provides screening for storage areas because storage sheds will be provided for yard maintenance equipment, large toys and strollers, and other large items and the storage sheds will be closed to views from the road and from adjacent neighbors and the Board has imposed a condition requiring that trash and recyclables be stored in animal-proof enclosures.

- 10.397 The proposal provides adequate recreational facilities, open space and amenities for the proposed use because the lot is large enough (over 26,000 square feet) to provide ample open space for recreation for two families.
- 10.398 The proposal is in harmony with the general purpose and intent of this Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.
- 10.395 The proposal does not create disharmony with respect to the scale and architecture of existing buildings because the size and location of the units are appropriate to the site and the units are a single-story design that will appear to blend with the landscape.
- <u>10.398</u> The proposal is in harmony with the general purpose and intent of the Zoning Bylaw for the reasons enumerated above.

Ms. Greenbaum MOVED to approve the Findings under Section 10.38 and the Conditions as amended. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to approve the findings under Section 10.38 of the Zoning Bylaw and the conditions as amended.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, under Sections 3.321 of the Zoning Bylaw to construct a two-family dwelling, as applied for by Thomas Lane, at Henry Street (Map 6A, Parcel 91, R-N Zone).

EDWARD RISING	HILDA GREENBAUM	JANE ASHBY
FILED THISday of	, 2007, at _	
in the office of the Amherst Town Cle	erk	
TWENTY-DAY APPEAL period exp	pires,	_2007.
NOTICE OF DECISION mailed this to the attached list of addresses by		
NOTICE OF PERMIT or Variance fil in the Hampshire County Registry of		, 2007,

Town of Amherst Zoning Board of Appeals SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, under Section 3.321 of the Zoning Bylaw to construct a two-family dwelling, as applied for by Thomas Lane, at Henry Street, (Map 6A, Parcel 91, R-N Zone), with conditions as follows:

- 1. The building shall be a unitary structure containing no more than two (2) dwelling units.
- 2. **Prior to the issuance of a Building Permit** the following conditions shall be met:
 - a. A revised set of floor plans and elevations, including labels and square footage for each room, egress and window locations and the entrance to the storage sheds, shall be submitted to the Board for review and approval at a public meeting.
 - c. Final site plans, including property line information and proposed square footage for the new parcel, frontage and setback information, the footprints of the structure(s), the proposed paved areas, the common driveway including the easement or right-of-way on land of W. D. Cowls, the area of trees to be removed, the location of the septic system leach field, existing topography, proposed grading and a landscape plan, shall be submitted to the Board for review and approval at a public meeting.
 - d. Both of the storage sheds shall be enclosed, weather-tight structures that can be securely locked. The exterior design of the two storage sheds shall be compatible with one another and with the exterior of the dwelling units. The applicant shall submit final plans and elevations of the storage sheds to the Board for approval at a public meeting.
 - e. Evidence of an easement over the property of W. D. Cowls Inc. for the purpose of ensuring access to the dwelling units shall be submitted to the Board for approval at a public meeting.
- 3. **Prior to the issuance of a Certificate of Occupancy** the following conditions shall be met:
 - a. Condominium documents shall be submitted for review and approval by the Board at a public meeting.
 - b. A common driveway maintenance agreement (among the owners of the two units and W. D. Cowls, the owner of the driveway right-of-way) shall be submitted for review and approval by the Board at a public meeting.
- 4. If any substantial changes are proposed to the approved site plans (including changes to the property lines) or to the floor plans or exterior of the buildings the applicant shall submit the changes to the Board for review and approval at a public meeting. The determination concerning whether or not a proposed change is substantial enough to require approval by the Board shall be made by the Building Commissioner.
- 5. An animal-proof enclosure shall be provided for trash and recyclables.
- 6. The proposed fuel tank(s) shall be either underground or enclosed in the basement.
- 7. All utilities connecting the two units shall be underground.

DATE

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